FEDERAL ELECTION COMMISSION
WASHINGTON, D C 20463

SEP 1 7 2002

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

John Gianulis, Chairman
Walter J. Tiller, Treasurer
Rock Island County Democratic Central Committee
P.O. Box 3128
Rock Island, IL 61204-3128

RE: MUR 5031 (Rock Island County Democratic Central Committee)

Dear Messrs. Gianulis and Tiller:

On June 22, 2000, the Federal Election Commission ("the Commission") notified the Rock Island County Democratic Central Committee ("the Rock Island Committee") and Walter J. Tiller, as treasurer, and John Gianulis, as chairman, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to you at that time. On July 31, 2000, Mr. Gianulis submitted a response to the complaint on behalf of the Rock Island Committee.

Upon further review of the allegations contained in the complaint, the Commission, on August 27, 2002, found that there is reason to believe that the Rock Island Committee and Walter J. Tiller, as treasurer, violated 2 U.S.C. §§ 433(a), 434, 441b, 441a(f), and 11 C.F.R. § 102.5(a)(1), provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is enclosed for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

If you are interested in expediting the resolution of this matter by pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, requests for pre-probable cause conciliation will not be entertained after briefs on probable cause have been mailed to the respondent.

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Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Brant Levine, the attorney assigned to this matter, at 800-424-9530 ext. 1572.

Sincerely,

David M. Mason
Chairman

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

Respondents: Rock Island County Democratic Central Committee and Walter J. Tiller, as treasurer

MUR: 5031

I. GENERATION OF MATTER

This matter originated with a complaint dated June 12, 2000 that was filed by the Rock Island County Republican Central Committee, alleging numerous violations of the Federal Election Campaign Act of 1971, as amended ("the Act") in connection with certain 1998 activities of the Rock Island County Democratic Central Committee ("the Rock Island Committee"). An amendment to the complaint was filed on September 18, 2000, alleging similar violations in 2000.

II. THE LAW

A. Political Committee Status

2 U.S.C. § 431(4)(C) includes in the statutory definition of "political committee" a "local committee of a political party which receives contributions aggregating in excess of $5,000 during a calendar year, or makes payments exempted from the definition of contribution or expenditure as defined [at 2 U.S.C. § 431(8) and (9)] aggregating in excess of $5,000 during a calendar year, or makes contributions aggregating in excess of $1,000 during a calendar year or makes expenditures aggregating in excess of $1,000 during a calendar year."[1] 2 U.S.C.

[1] Courts have not extended the "major purpose test" to local party committees required to register pursuant to 2 U.S.C. § 431(4)(C). Rather, courts have only applied the major purpose test to organizations otherwise required to register pursuant to 2 U.S.C. § 431(4)(A). *See Buckley v. Valeo*, 424 U.S. 1 (1976), *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1996), *FEC v. GOPAC*, 917 F. Supp. 851 (D.D.C. 1996).

§ 431(8)(A) defines "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value, made by any person for the purpose of influencing a federal election," while 2 U.S.C. § 431(9)(A) defines "expenditure" as "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing" any federal election.

2 U.S.C. § 433(a) requires that all committees file a Statement of Organization with the Commission within 10 days of achieving political committee status. 2 U.S.C. § 434 requires all political committees to file reports of their receipts and disbursements.

11 C.F.R. § 104.12 addresses situations in which a nonfederal committee with cash on hand becomes a political committee under the Act. At the time of registration with the Commission, such committees are required to "disclose on their first report the sources(s) of" their cash on hand. "The cash on hand balance is assumed to be composed of those contributions most recently received by the committee. The committee shall exclude from funds to be used for Federal elections any contributions not permissible under the Act."[2] *Id.*

B. Affiliation of Committees

2 U.S.C. § 433(b)(2) requires that political committees include in their Statements of Organization the name, address, relationship and type of any affiliated committees. 2 U.S.C. § 441a(a)(5) states that all political committees "established or financed or maintained or

[2] In Advisory Opinion 1980-117, the Commission concluded that a candidate's state committee, which had received labor organization contributions, could become his authorized committee for his campaign for federal office, "by excluding on a first in, first out basis all contributions which are impermissible under the Act." Similarly, in Advisory Opinion 2000-25 the Commission permitted the transfer of funds from a party committee's nonfederal account to its new federal account, stating that the committee "should review the cash on hand in its nonfederal account using a "first in-first out" analysis ("FIFO)." The Commission also required the committee to assure that the transferred funds "may permissibly be deposited in the Federal account under section 102 5(a)(2)."

controlled" by the same persons or groups of persons are treated as a single committee for purposes of contributions made or received. 11 C.F.R. § 100.5(g)(2) states that "[a]ll committees . . . established, financed, maintained or controlled by . . . any . . . person, or group of persons, . . . or any local unit thereof, are affiliated."

With regard to party committees, 11 C.F.R. § 110.3(b)(3) provides that "all contributions made by the political committees established, financed, maintained or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee." This presumption may be overcome if a particular party committee "has not received funds from any other political committee established, financed, maintained or controlled by any party unit" and the committee has not made "its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained or controlled by another party unit." 11 C.F.R. § 110.3(b)(3)(i) and (ii).

There may also be factors in a situation that would support a finding that party committees are affiliated even if the initial presumption of affiliation is negated. For example, if a local party committee were "established" by a state party or if there were overlaps of officers or other personnel between the two entities, a finding of affiliation could be warranted even though no monies had gone from one entity to the other and even though no coordination of contributions had occurred. 11 C.F.R. § 100.5(g)(4)(i) and § 110.3(a)(3)(i).

C. Independent Expenditures

Pursuant to 11 C.F.R. § 100.8(a)(3), an independent expenditure is an "expenditure" for purposes of the Act and regulations; therefore, such expenditures count toward the threshold for political committee status. An "independent expenditure" is an expenditure made by a person

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that "expressly advocate[s] the election or defeat of a clearly identified candidate" but is made "without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. § 431(17) and 11 C.F.R. § 100.16. There are no limitations on independent expenditures; however, those in excess of $200 within a calendar year that are made by political committees other than authorized committees must be reported pursuant to 2 U.S.C. § 434(b)(6)(B)(iii).

D. Contribution and Expenditure Limitations

2 U.S.C §§ 441a(a)(1)(C) and 441a(a)(2)(C) respectively limit to $5,000 the amount that any "person" or any multi-candidate committee may contribute in a single calendar year to a political party committee that is not a national party committee. 2 U.S.C. § 441a(a)(2)(A) limits to $5,000 the amount that a multi-candidate committee may contribute to a candidate committee per election. "Person" is defined at 2 U.S.C. § 431(11) as including "an individual, partnership, committee, association . . . or any other organization or group of persons."

2 U.S.C. § 441a(d)(1) permits " the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, [to] make expenditures in connection with the general election campaign of candidates for Federal office, subject to [certain] limitations . . . ." This provision permitting additional but limited expenditures by state and local party committees on behalf of their candidates, over and above their $5,000 contribution limit, does not depend upon the affiliation of the various party committees; rather, the statute provides "one spending limit for the entire State party organization: State, county, district, city, auxiliary, or other party political committee." Advisory Opinion 1978-9.

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State party committees are responsible for ensuring that the coordinated expenditures of all committees within the state and local party organization remain within the Section 441a(d) limitations. 11 C.F.R. § 110.7(c). State parties may assign their Section 441a(d) expenditure limitations to a national party committee. Democratic Senatorial Campaign Committee v. FEC, 660 F. 2d 773 (D.C. Cir. 1980), rev'd 454 U.S. 27 (1981), on remand, 673 F.2d 4551 (1982).

Only expenditures that are "coordinated" between a party committee and a candidate are subject to the Section 441a(d) limitations. Coordinated expenditures are expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his or her authorized political committees, or their agents. 2 U.S.C. § 441a(a)(7)(B)(i). Political parties can also make expenditures independently of candidates that are not subject to the limitations of 2 U.S.C. § 441a(d). See Colorado Republicans v. Federal Election Commission, 518 U.S. 604, 614-616 (1996) ("Colorado Republicans I").[3] Once coordinated party expenditures exceed the limitations of Section 441a(d), they become in-kind contributions to the candidate with whose committee they are coordinated. Committees that accept or receive contributions in excess of the limitations, or that use excessive contributions to make contributions or expenditures, violate 2 U.S.C. § 441a(f).

E. Generic Party Activity

State and local party committees may undertake generic voter drive activity, including voter identification, voter registration and get-out-the-vote activities directed toward the general

[3] In FEC v Colorado Republican Federal Campaign Committee, 533 U S 431 (2001) ("Colorado Republicans II"), the Supreme Court upheld the constitutionality of the coordinated party expenditure limits set forth at Section 441a(d)

public and in support of candidates of a particular party or campaigning on a particular issue, without having to allocate these expenditures to such candidates, provided that no specific candidate is mentioned. 11 C.F.R. § 106.5(a)(2)(iv). Expenditures for such activities must, however, be reported as "Administrative/ Voter Drive" activity and, as discussed below, must be allocated between the committee's federal and nonfederal accounts. 11 C.F.R. § 104.10(b).

F. Exempt Party Activity

11 C.F.R. § 100.7(b)(3) & (8) permit the provision of uncompensated personal services to a party committee by volunteers and the unreimbursed payment by volunteers of their own living expenses, without such services or payments becoming contributions. The party organization may pay for the travel and subsistence of the volunteers without taking away their volunteer status. 11 C.F.R. § 100.7(b)(15)(iv). Such payments for travel and subsistence must be reported, but do not need to be allocated to specific candidates. 11 C.F.R. §§ 100.7(b)(15)(v), 100.8(b)(16)(v), and 104.10(b).

2 U.S.C. §§ 431(8)(B)(x) and (9)(B)(viii) and 11 C.F R. §§ 100.7(b)(15) and 100.8(b)(16) exempt from the definitions of "contribution" and "expenditure" payments by state or local party committees "of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters and yard signs) used by such committees in connection with volunteer activities on behalf of any nominees(s) of such party," so long as such materials are not used in general public communications or political advertising such as

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broadcasting or direct mail.[4] The materials must be distributed by volunteers, not by commercial or for-profit entities. 11 C.F.R. § 100.8(b)(16)(iv). Materials furnished by a national party committee or bought with national party funds are not eligible for the exemption. 11 C.F.R. § 100.8(b)(16)(vii).

The federal portions of the payments for these materials must come from contributions that are "subject to the limitations and prohibitions" of the Act and must not be made "from contributions designated by the donor to be spent on behalf of a particular candidate or particular candidates for Federal office." 11 C.F.R. § 100.8(b)(16)(i), (ii), and (iii).

Because activity falling within the so-called "volunteer exemption" does not result in contributions or expenditures, neither express advocacy, nor other language in the communications supporting a candidate's election or defeat, nor coordination of such activity by a state party with the candidate(s) benefited becomes an issue. While such expenditures must be reported as disbursements, as required by 11 C.F.R. § 104.3, they need not be allocated to particular candidates. 11 C.F.R. § 100.8(b)(16)(v).

G. Allocation of Expenditures

Pursuant to 11 C.F.R. § 106.1(a)(1), any expenditure made on behalf of more than one clearly identified candidate must be "attributed to each such candidate according to the benefit reasonably expected to be derived." Expenditures for generic party activity and for party activities exempt from the definition of "contribution" must be allocated between the party

[4] "Direct mail" is defined at 11 C F R § 100 8(b)(16)(i) as "any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists", lists obtained from public offices are not considered commercial lists Explanation and Justification, 45 Fed Reg 15081, (March 7, 1980)

committee's federal and nonfederal accounts according to the ballot composition methods set out at 11 C.F.R. § 106.5(d)(i) and (ii). 11 C.F.R. § 106.5. Payments for party communications used by volunteers as part of exempt party activity must be allocated between federal and nonfederal activity using the time or space methods set out at 11 C.F.R. § 106.5(e). More generally, expenditures for publication or broadcast communications are allocable based upon the proportion of space or time devoted to a particular candidate. 11 C.F.R. § 106.1(a)(1).

Party committees that finance activities with regard to both federal and nonfederal elections must either establish a separate federal account into which are to be deposited only contributions that are neither prohibited nor in excess of the statutory limitations, or, in the alternative, must establish a separate committee for purposes of its federal activities. 11 C.F.R. § 102.5. Contributions, expenditures and transfers made in connection with a federal election by any committee with separate federal and nonfederal accounts must be made solely from the federal account, and no funds may be transferred into that account from a nonfederal account except as provided by 11 C.F.R §§ 106.5 and 106.6. 11 C.F.R. § 102.5(a)(1)(i).

H. Prohibited Contributions

2 U.S.C. § 441b prohibits the making of contributions and expenditures by corporations, banks and labor organizations in connection with federal elections, and the receipt of such contributions by federal candidates and political committees. Committees also violate this provision by using prohibited contributions to make expenditures in connection with federal elections.

As noted above, 11 C.F.R. § 102.5(a) requires political committees that finance both federal and nonfederal activities either to maintain separate federal and nonfederal accounts or make sure that no prohibited funds go into an account used for both purposes. 11 C.F.R.

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§ 102.5(b), on the other hand, permits committees that are not political committees under the Act, and State and local party committees that undertake exempt activity, to either maintain a separate account into which only permissible funds are deposited or be able to demonstrate that there were sufficient permissible funds in an account to make federal contributions or expenditures.

I. Reporting of In-kind Contributions and Coordinated Party Expenditures

Political committees are required to report all expenditures aggregating in excess of $200 in a calendar year, including in-kind contributions to candidates, pursuant to 2 U.S.C. § 434(b)(5)(A). Party committees are also required to report all coordinated party expenditures, pursuant to 2 U.S.C. § 434(b)(4)(H)(iv) and (6)(B)(iv). State party committees are responsible for either filing consolidated reports of their own and subordinate party committees' coordinated expenditures or for finding another approved method of controlling these expenditures. 11 C.F.R. § 100.7(c).

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III. FACTUAL AND LEGAL ANALYSIS

A. Political Committee Status of the Rock Island Committee

The Rock Island Committee is not registered with the Commission. As a local party committee, it should have registered as a political committee under the Act if it met one of the following three thresholds during a calendar year: 1) it made more than $1,000 in contributions or expenditures; 2) it raised more than $5,000 in contributions; or 3) it spent more than $5,000 on exempt party activities. 2 U.S.C. §§ 431(4)(C) and 433(a). As explained below, the Rock Island Committee appears to have made more than $1,000 in expenditures in 1998. These expenditures

were used for mailers, radio advertisements, and a $1,000 contribution to the Friends of Lane Evans Committee ("the Evans Committee").[5]

Attached to the complaint were two mailers apparently sent out in 1998 by the Rock Island Committee. According to the complaint, one mailer was delivered on October 19, and the second on October 26, 1998. Both mailers refer to Tuesday, November 3, and include the phrase, "Vote for Congressman Lane Evans And The Entire Democratic Ticket." The disclaimer on each of the two mailers read: "Paid For By Rock Island County GOTV Committee," an account of the Rock Island Committee.

The complaint also discusses a radio advertisement that allegedly was paid for by the Rock Island Committee and that urges people to vote for Lane Evans. The complaint did not provide a script for these radio advertisements, but stated that "Congressman Lane Evans was the only candidate mentioned by name in the radio commercial," that "[t]he script commented on his character, qualifications and accomplishments," and that the last lines of the advertisement "said, 'Lane Evans has always stood by us. Now it's time to stand by Lane Evans. On November 3rd, Vote for the entire Democratic ticket.'" Complaint at pages 10-11.

Generic party activities, as well as certain exempt party activities, do not constitute expenditures under the Act. *See* 11 C.F.R. §§ 106.5(a)(2)(iv) and 100.7(b)(16). Nonetheless, neither the mailers nor the radio advertisement appear to qualify for these exemptions. First, the communications specifically refer to candidate Evans and thus do not qualify as generic party activity. *See* 11 C.F.R. § 106 5(a)(2)(iv). Second, the mailers were apparently distributed by a

[5] The Rock Island Committee's state report itemized the contribution to the Evans Committee as "GOTV Assistance " The Evans Committee reported receiving the $1,000 as a contribution

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commercial vendor, not as part of volunteer activities, and are thus ineligible to be treated as exempt volunteer activity, as are radio advertisements. *See* 11 C.F.R. § 100.7(b)(16). The Rock Island Committee, in its response to the complaint, acknowledges that the communications may have constituted federal expenditures:

> The Committee did not intend to become a federal political committee, and believed that its activities were within the range to avoid any such requirement. We are now aware that some of the activities may not have been permissible exempt activity . . ."

(Emphasis added).

Because payments for the mailers and the radio advertisement appear to be expenditures, the next issue is whether the Rock Island Committee spent more than $1,000 on them. As the complaint notes, the Rock Island Committee's 1998 state report for the period of July through December shows several payments apparently related to the mailers and the radio advertisement. Although the exact dates of these expenditures are not always given (the timing for several was reported as "7-1-98 thru 12-31-98"), the seemingly relevant payments are summarized below.

Payee	**Amount**	**Purpose**
Review Printing	$6,177.10	Printing and Mailing Expenses
Rock Island County Clerk	$720.00	Voter Lists, Labels and Poll Lists
Quad-City Printers	$1,790.00	Printing Mailers
Postmaster	$13,764.30	Postage, Bulk Mailing, etc.
Radio Station WSDR	$624.00	Radio Advertising
Axelrod and Associates	$12,001.44	Radio buy & production cost
TOTAL:	**$35,076.84**	

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In addition to expenses listed above, the Rock Island Committee's state report also itemized a $4,930.44 in-kind contribution from J.V. Consulting Services. The complaint alleged that this in-kind contribution was made in connection with these mailings: "the bulk rate permit on both direct mail pieces . . . Permit #211, is registered to J.V. Consulting . . ." If this allegation in the complaint is correct, and because in-kind contributions are reportable by the recipient committee as expenditures, this $4,930.44 paid by J.V. Consulting should be added to the Rock Island Committee's expenditures. *See* 11 C.F.R. § 104.13.

Both the mailers and the radio advertisements contain the exhortation to vote for Lane Evans and the Democratic ticket. Expenditures made on behalf of more than one clearly identified candidate must be attributed to candidates based on the space and time devoted to each candidate as compared to the total space and time devoted to all candidates.[6] *See* 11 C.F.R. § 106.1(a)(1). The regulations do not specifically address allocating expenditures for communications that combine generic party support with express advocacy, as is the case here. Nonetheless, the Commission has approved of allocating such expenditures on a time-space basis to determine the benefit reasonably expected to be derived by the clearly identified candidate.

Applying the time-space ratio to each mailer and the radio advertisement, the Commission calculated that the Rock Island Committee made federal expenditures of at least

[6] Absent Lane Evans being mentioned by name, each mailer would have constituted generic party activity which would have been subject to a ballot composition ratio of 20% federal/80% nonfederal because there were two federal candidates—one for the House of Representatives (Congressman Evans) and one for the U S Senate (Senator Carol Mosley Braun)—and eight nonfederal candidates on the ballot *See* 11 C F R. § 106 5(d)

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$30,782.40.[7] Combined with its $1,000 contribution to the Evans Committee, the Rock Island Committee appears to have made a minimum of $31,782.40 in federal expenditures during the 1998 calendar year. Therefore, there is reason to believe that the Rock Island County Democratic Central Committee and Walter J. Tiller, as treasurer, violated 2 U.S.C. §§ 433(a) and 434 by failing to register and report as a political committee.

B. Receipt and Use of Impermissible Funds

The complaint also alleges that the Rock Island Committee received and expended funds that are prohibited under the Act. The complaint attached the Rock Island Committee's state disclosure report for the second half of 1998. This report, summarized below, reveals total receipts of $111,488.17 plus an in-kind contribution of $4,930.

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July-December 1998 Receipts by the Rock Island Committee

Source	Amount
Itemized contributions	$9,500
Unitemized contributions	$31,808.95
Local and state unions	$30,486
State committees and PACs	$38,693.22
Loan from John Gianulis	$1,000
In-kind receipts from J.V. Consulting Services	$4,930.44

[7] Specifically, the Commission applied a 50% federal ratio for the first mailer because it equally supported the party ticket and Lane Evans, 90% for the second mailer because it almost exclusively supported Lane Evans, and 92% for the radio advertisement because it also almost exclusively focused on Lane Evans and because less than 5 seconds (8% of the total amount of time) were likely spent urging listeners to vote for the entire party ticket

The above information indicates that the Rock Island Committee may have received prohibited labor or corporate contributions under the Act. *See* 2 U.S.C. § 441b. Thus, the Rock Island Committee may have used impermissible funds to pay for federal activity in violation of 11 C.F.R. § 102.5(a)(1). Although the Rock Island Committee appears to have received sufficient permissible funds from individuals to pay for its federal expenditures, it has not attempted to show through reasonable accounting means that only permissible funds were used for those federal expenditures. Therefore, there is reason to believe that the Rock Island County Democratic Central Committee and Walter J. Tiller, as treasurer, violated 2 U.S.C. § 441b and 11 C.F.R. § 102.5(a)(1).

C. Affiliation of the Rock Island Committee with the State Party

The complainant alleged that the Rock Island Committee is affiliated with both the State Party and the Rock Island County GOTV Committee ("Rock Island GOTV Fund"). The complaint also cites a $2,000 transfer from the State Party to the Rock Island Committee on October 31, 1998 as evidence of affiliation. The Rock Island Committee "confirm[s] that it is affiliated with the state party" and states that the Rock Island GOTV Fund is an account it established "to conduct its coordinated campaign activities." The State Party has denied affiliation with the Rock Island Committee, stating that the latter "is not a political committee as defined by the Act," and arguing that the single, $2,000 transfer from the state party to the Rock Island Committee was a nonfederal transfer "specifically permitted by 11 C F.R. § 110.3(c) "

The Commission's regulations establish the presumption that state party committees and their subordinate party committees are affiliated. 11 C.F.R. § 110.3(b)(3). The presumption

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holds if the subordinate committee is "established, financed, maintained, or controlled by a State Party."[8] *Id.* Here, the $2,000 transfer from the State Party to the Rock Island Committee is evidence that the Rock Island Committee had a relationship with the State Party and thus was not outside the presumption of affiliation. Additionally, the chairman of the Rock Island Committee, John Gianulis, was the former treasurer of the State Party, indicating a possible connection between maintenance of the committees.

It is also possible that the State Party's affiliation with the Rock Island Committee can be evidenced by their joint participation in the Democratic National Committee's "Coordinated Campaign" program. This GOTV program involving party committees at all levels, as well as non-party entities, has been an election cycle fixture in many states, beginning in the early 1980's[9] and extending into and beyond 1998.[10]

As was ascertained by the Commission in MUR 4291, the Democratic "Coordinated Campaign" in 1996 was a collection of statewide campaign structures involving Democratic nominees, officeholders and other, allied organizations in each state. These separate coordinated campaigns operated under "ground rules" set out by the DNC and/or the state party committees,

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[8] The regulations state that the presumption of affiliation may be overcome if the subordinate committee has not received funds from other committees in the party unit and has not coordinated its contributions with other committees in the party unit *See* 11 C F R § 110.3(b)(3) Because the Rock Island Committee has received funds from the State Party, however, the presumption of affiliation cannot be overcome Although the funds transferred to the Rock Island Committee by the State Party were likely nonfederal, section 110 3(b)(3)(i) refers to "funds," not to "federal funds," "contributions," or "expenditures " In addition, the regulation cites no amount below which a state party committee can make disbursements to a local party committee without disqualifying it from the exemption to the presumption of affiliation

[9] Deposition of Jill Alper, then political director of the Democratic National Committee, in FEC v Democratic Party, et al, No. CIV-S-97-891, GEB/PAN California, April 19, 1999

[10] In 1996, for example, certain races in certain states were targeted for extensive telephoning, direct mail for voter identification and GOTV, and media advertising

and involved a variety of field activities. The party hierarchy, including the state parties, meticulously planned the activities to be undertaken within their states and even required "sign-offs" by state party leadership. The coordinated campaigns were intended to centralize all Democratic voter identification and GOTV efforts within each state or subdivision thereof, thus both eliminating duplication of effort between Democratic campaigns for different offices in the same geographic jurisdictions and enhancing the party committees' abilities to take maximum advantage of the Commission regulations concerning allocation of expenses between federal and nonfederal candidates.

Given language in the Rock Island Committee's response to the complaint which refers to a coordinated campaign, the high profile and competitive Senate and governor races in Illinois in 1998, and the challenges that year to certain Democratic incumbents in the U.S. House of Representatives from Illinois districts, including the 17th District, it appears likely that there was an active Democratic "Coordinated Campaign" in Illinois in 1998. Available information suggests it would have been likely that the local party committees would not only have coordinated their GOTV activities with the State Party, but that the State Party would have exerted considerable control via approval power over those activities. Such control could well have brought the relationship of the State Party and the Rock Island Committee within the definition of affiliation at 11 C.F.R. § 100.5(g).

In light of the presumption of affiliation, the Rock Island Committee's actual admission of such a relationship, the likelihood of a 1998 Coordinated Campaign, and the State Party's 1998 transfer to the Rock Island Committee, there are sufficient grounds to suggest that the Rock Island Committee was affiliated with the State Party. Accordingly, the failure of the Rock Island Committee to report the State Party as an affiliated committee provides an additional basis for

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the Commission's finding that there is reason to believe the Rock Island Committee violated 2 U.S.C. § 434.

D. Affiliation of the Rock Island Committee with the Victory Fund

The complaint also alleges that the Rock Island Committee is affiliated with the 17th District Victory Fund ("the Victory Fund"). The Victory Fund's name is derived from the Illinois 17th Congressional District, in which Lane Evans was a candidate and which encompasses Rock Island and Knox Counties. The Victory Fund originally filed a Statement of Organization with the Commission on June 22, 1998 as a local committee of the Democratic Party, but it did not list any affiliated committees. The Rock Island Committee denies affiliation with the Victory fund and claims that the Victory Fund was created independently of the State Party and its subordinated committees. The Victory Fund similarly denies affiliation with the Rock Island Committee on the stated ground that the Victory Fund did not receive any funds from any other party committee and it did not coordinate its contributions with any other party committee.

John A. Gianulis served as chair of both the Rock Island Committee and the Victory Fund in 1998. The Victory Fund has acknowledged that it shares the same chairperson as the Rock Island Committee, but maintains that "the Chairman of the two committees does not control the contributions made by the committees, but rather is only one voice of many that make these decisions." Nonetheless, the fact that the Victory Fund and the Rock Island Committee share a common officer serves as evidence of affiliation. *See* 11 C.F.R. § 100.5(g)(4)(ii)(E) Further, if Mr. Gianulis or the Rock Island Committee had an active role in the creation of the Victory Fund, that would also serve as evidence of affiliation. *See* 11 C F.R. § 100.5(g)(4)(ii)(J).

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Finally, both the Rock Island Committee and the Victory Fund used a common vendor, Strategic Consulting, Inc., for certain GOTV activities. *See* 11 C.F.R. § 100.5(g).

These facts are sufficient to indicate that the Rock Island Committee may have been affiliated with the Victory Fund. The failure of the Rock Island Committee to report the Victory Fund as an affiliated committee thus provides an additional basis for the Commission's finding that there is reason to believe the Rock Island Committee violated 2 U.S.C. § 434.

E. Coordinated Party Expenditures

1. Expenditures by the Rock Island Committee

The complaint alleges that the Rock Island Committee made excessive coordinated party expenditures. In 1998, one of the Democratic national party committees could have made $32,550 in coordinated expenditures on behalf of a candidate for the House of Representatives in the general election in Illinois. *See* 2 U.S.C. § 441a(d). Additionally, the Democratic Party of Illinois and the county and other subordinate committees of that party committee could together have made another $32,550 in Section 441a(d) coordinated expenditures on behalf of each Democratic House candidate. *Id.*

In addition to coordinated expenditures, the State Party, together with its local committees, and the national party could each have made a total of $5,000 in direct contributions to that candidate for the general election.[11] *See* 2 U.S.C. § 441a(a)(2)(A). Thus, the State Party

[11] The Commission has concluded in several advisory opinions that, because all affiliated political committees share a single contribution limitation and may make unlimited transfers among themselves, a new political committee affiliated with a pre-existing multi-candidate committee takes on the latter's multi-candidate status Advisory Opinions 1990-16, 1986-42, 1983-19, 1980-40 Thus, in the present matter, affiliation of the Rock Island Committee with the Democratic Party of Illinois, a multi-candidate committee, would have conferred multi-candidate status upon the Rock Island Committee, permitting the latter and any affiliated committees to make a total of $5,000 in contributions to the general election campaign of Lane Evans

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together with its subsidiary committees and the national party each could have made $5,000 in contributions to the Evans Committee as well as $32,550 in coordinated expenditures on behalf of the Evans campaign. The national party could have made additional expenditures within any limitations assigned to it by the State Party, although the State Party's own limitation would have been diminished by the amount of the assignment used. 2 U.S.C. § 441a(d).

In 1998, the State Party reported no Section 441a(d) expenditures on behalf of Lane Evans by itself or by any subordinate committee. Reports filed by the Democratic Congressional Committee ("DCCC") in 1998 itemized on its Schedule F submissions show $46,434 in Section 441a(d) expenditures for "Mail Services" and "In-House Media Services" on behalf of Lane Evans. Each such schedule bore at the top of the statement: "THIS COMMITTEE HAS BEEN DESIGNATED TO MAKE COORDINATED EXPENDITURES BY THE DEMOCRATIC NATIONAL COMMITTEE OR THE STATE DEMOCRATIC PARTY." Given that the DCCC's reported Section 441a(d) expenditures exceed the national party's limit, it appears that the State Party also assigned at least $13,884 of its expenditure authority to the DCCC ($46,434 – 32,550 = $13,884).

The State Party's apparent assignment of a portion of its expenditure authority to the DCCC would have left the State Party with $18,666 for its own and its subordinates' use. The addition of the $5,000 in contribution authority would have brought to $23,666 the amount that the State Party and its subordinate local party committees could have expended on behalf of the Evans campaign However, as discussed above in Section A, the Rock Island Committee alone has apparently made a total of $31,782.40 in federal expenditures to or on behalf of Lane Evans If these expenditures were coordinated with the Evans Committee, then the Rock Island Committee would have exceeded its expenditure authority under 2 U.S.C. § 441a(d)

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The complaint alleges that the expenditures by the Rock Island Committee were in fact coordinated with the Evans Committee. To support this allegation, the complaint cited the picture on the second Rock Island Committee mailer as probably having been provided by the Evans Committee. Additionally, Lane Evans himself may have been personally involved with the mailers, as he is listed on the mailer as a member of the Rock Island GOTV Fund. The Evans Committee has not explicitly denied coordination with the Rock Island Committee, but has stated instead that it understood the local party's activities to have been "exempt party" activities. The Rock Island Committee also does not deny coordination; in fact, it explicitly states that the Rock Island GOTV Fund was used to conduct "coordinated activities"

The aforementioned facts suggest that the Rock Island Committee and the Evans Committee may have engaged in substantial communications about the creation and distribution of the mailers and radio advertisement.[12] Therefore, there is reason to believe that the Rock Island County Democratic Central Committee and Walter J. Tiller, as treasurer, violated 2 U.S.C. § 441a(f) by exceeding the Section 441a(d) limitation as to the campaign of Lane Evans.

2. Expenditures by the Victory Fund

The complaint also alleges that the Victory Fund made excessive coordinated party expenditures to the Lane Evans campaign. As discussed in the previous section, expenditures made by state and local party committees pursuant to 2 U.S.C. § 441a(d) are subject to one limitation. 11 C.F.R. § 110.7(b)(1) Thus, the amount of any coordinated party expenditures

[12] If the expenditures were independent, the Rock Island Committee was required to report these as independent expenditures and certify that the expenditures were not made in coordination with the candidate, which it has not done *See* 2 U S C § 434(b)(4)(H)(iii)

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made by the Victory Fund to the Lane Evans campaign must be added to the total coordinated party expenditures made by the Rock Island Committee.

To determine whether the Victory Fund made coordinated party expenditures, it is necessary to examine the interaction it had with the Evans Committee. The Victory Fund has stated that the committee "has, for many years, conducted coordinated campaign efforts for Democratic candidates in this region – those efforts have consisted primarily of assisting in educating the public about Democratic Party issues and getting people out to vote on election day." The Evans Committee has acknowledged that it met "periodically with the 17th District Victory Fund to discuss the coordinated campaign activities. The Evans Campaign understood that the activities to be undertaken as part of the coordinated campaign were exempt party activities under the federal campaign laws, or generic party activities benefiting the entire ticket."

Although the Victory Fund states that it has focused on GOTV activity designed to benefit the entire Democratic ticket, there are a number of bases for believing that the Victory Fund may have coordinated its expenditures with the Evans Committee. In addition to being named after Congressman Evans' congressional district, the Victory Fund maintained its headquarters in the same building and on the same floor as the headquarters of the Evans campaign.[9] The complaint also alleges that "[t]he campaign manager for Friends of Lane Evans held organizational planning meetings every Sunday with the staff of the 17th District Victory Fund." Additionally, the Victory Fund contracted with Strategic Consulting, Inc. to organize "volunteers" who reportedly worked on behalf of the Evans campaign. Finally, neither the Victory Fund nor the Evans Committee have disputed the allegations in the complaint and/or the press about volunteers from the Victory Fund taking part in activities that reportedly benefited the Evans campaign.

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Because the Victory Fund may have made coordinated expenditures on behalf of the Evans Committee, those expenditures would count against the amount of coordinated expenditure authority available to the Rock Island Committee. Accordingly, there is an additional basis for finding reason to believe that expenditures by the Rock Island Committee violated 2 U.S.C. § 441a(f) by exceeding the coordinated party expenditure limit of 2 U.S.C. § 441a(d).

3. Expenditures by the Knox County Committee

The complaint also alleges that the Knox County Democratic Central Committee ("the Knox County Committee") has made coordinated party expenditures that apply to the limitations of 2 U.S.C. § 441a(d). Any such expenditures would decrease the amount of coordinated party expenditure authority available to the Rock Island Committee. The complaint provided evidence that the Knox County Committee made an expenditure in 1998 for at least one radio advertisement that supported the candidacy of Lane Evans. It appears that this was the same advertisement as that placed by the Rock Island Committee during the same period. As noted above with reference to the Rock Island Committee advertisement, the complaint stated that Congressman Lane Evans was the only candidate mentioned by name in the commercial and that listeners were told that "[n]ow it's time to stand by Lane Evans." The advertisement ended with "On November 3rd, Vote for the entire Democratic ticket."

The Knox County Committee has stated:

> Our understanding . . . was that the Committee could undertake certain general party get-out-the-vote activities for the candidates seeking election as Democrats, including activities that involved a Federal candidate, without incurring a registration and reporting obligation. Among the activities undertaken, the Committee has traditionally placed advertising in local newspapers and on local radio stations to encourage voters to go to the polls and to vote for Democratic party candidates The

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advertisement cited by the Complaint was a part of the Committee's GOTV efforts during the 1998 election. As you can see from the amount in question ($1,046), the effort was rather modest in scope.

The complaint attached documents that appear to reference the agreements between the Knox County Committee and the radio stations that ran the ads. One document states that it was submitted "on behalf of Demo. Central Com.," but cites the name "Lane Evans," on the line that begins: "The broadcast time will be used by _____." The three forms attached to the agreement also contain the name "Lane Evans" in the block headed "Announcement Name." Thus, the $1,046 payment for the advertisement appears to have been made by the Knox County Committee in support of Lane Evans.

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Generic party activity, as well as certain exempt party activity, does not constitute an expenditure under the Act. 11 C.F.R. §§ 106.5(a)(2)(iv) and 100.7(b)(16). Nonetheless, as was discussed in the section on the Rock Island Committee, the radio advertisement cited by the complaint does not appear to qualify for either exemption. First, the advertisement specifically refers to Lane Evans, thus nullifying the exemption for generic party activity. *See* 11 C.F.R. § 106.5(a)(2)(iv). Second, public political advertising—such as through the radio—cannot qualify for exempt activity. *See* 11 C.F R. § 100.7(b)(16). Indeed, the Knox County acknowledges that the costs of the advertisement constituted a federal expenditure, stating that although it believed the radio advertisement to be exempt GOTV activity, "We now understand that public political advertising cannot be a part of this exempt activity."

The report filed by the Knox County Committee with the Illinois State Board of Elections covering the period of July 1-December 31, 1998 itemized two payments to Galesburg Broadcasting Co., one of $1,046 on October 22 and one of $448 on November 3. Both were reported as being for "Broadcasting " The two agreement forms for political broadcasts that were

attached to the complaint are related to Knox County Committee and show the same expenditure figures. Each is related to an advertisement placed with WAAG/WGIL.

The radio advertisement contains the exhortation to "stand by" Lane Evans and the Democratic ticket. Expenditures made on behalf of more than one clearly identified candidate must be attributed to candidates based on the space and time devoted to each candidate as compared to the total space and time devoted to all candidates.[13] *See* 11 C.F.R. § 106.1(a)(1). The regulations do not specifically address allocating expenditures for communications that combine generic party support with express advocacy, as is the case here. Nonetheless, the Commission has approved of allocating such expenditures on a time-space basis to determine the benefit reasonably expected to be derived by the clearly identified candidate. Thus, as with the communications by the Rock Island Committee, the Commission applied the time-space ratio to the radio advertisement and calculated that the Knox County Committee appears to have made at least a $962 federal expenditure.[14]

Expenditures made by state and local parties pursuant to 2 U.S.C. § 441a(d) are subject to one limitation. 11 C.F.R. § 110.7(b)(1). The complaint provided information that expenditures for the radio advertisement by the Knox County Committee—which urged listeners to "Stand by Lane Evans"—were coordinated with the Evans campaign. The complaint attached the related NAB Agreement Form for Political Broadcasts, which appears to have been completed and

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[13] Lane Evans is the only clearly identified candidate that the radio advertisement supported Absent Lane Evans being mentioned by name, the advertisement would have constituted generic party activity, which would have been subject to a ballot composition ratio of 20% federal/80% nonfederal *See* 11 C F R § 106 5(d)

[14] Specifically, the Commission applied 92% of the total cost of the radio advertisement as a federal expenditure because the advertisement focused almost exclusively focused on Lane Evans and because less than 5 seconds (or 8% of the entire time) were likely spent urging listeners to vote for the entire party ticket

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signed by Kevin Gash on behalf of the Knox County Committee. As noted in the complaint, Mr. Gash also is shown on a report filed by the Evans Committee as the recipient of a salary payment. Therefore, the apparent involvement of an Evans Committee employee indicates that the Knox County Committee's payment for the radio advertisement may have been coordinated with Evans' campaign.

The Knox County Committee's apparent coordinated party expenditures on behalf of Lane Evans of at least $962 would count against the coordinated party expenditure limit. When added to the amount of coordinated party expenditures apparently made by the Rock Island Committee, the Victory Fund, and the Democratic Congressional Campaign Committee, these expenditures exceed the limits of 2 U.S.C. § 441a(d). Accordingly, there is an additional basis for finding reason to believe that the expenditures by the Rock Island Committee violated 2 U.S.C. § 441a(f) by exceeding the Section 441a(d) limitation.

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